



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/826,905

04/15/2004

Michael J. Masterson

60018/101:1

2237

3528 7590 01/13/2009

STOEL RIVES LLP  
900 SW FIFTH AVENUE  
SUITE 2600  
PORTLAND, OR 97204-1268

EXAMINER

ARK, DARREN W

ART UNIT

PAPER NUMBER

3643

MAIL DATE

DELIVERY MODE

01/13/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Interview Summary</b>	<b>Application No.</b> 10/826,905	<b>Applicant(s)</b> MASTERSON, MICHAEL J.	
	<b>Examiner</b> Darren W. Ark	<b>Art Unit</b> 3643	

All participants (applicant, applicant's representative, PTO personnel):

(1) Darren W. Ark. (3) \_\_\_\_.

(2) John A. Rafter, Jr.. (4) \_\_\_\_.

Date of Interview: 06 January 2009.

Type: a) ☒ Telephonic b) ☐ Video Conference  
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.  
If Yes, brief description: \_\_\_\_.

Claim(s) discussed: 1-81.

Identification of prior art discussed: Prior art of record.

Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

/Darren W. Ark/ Primary Examiner, Art Unit 3643	
----------------------------------------------------	--

## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

#### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

#### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

#### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Applicant argued that Volk et al. 5,988,102 does not disclose the openings extending through the body transverse to the longitudinal axis of the body. Examiner agreed that such limitation would overcome Volk et al. if it was positively recited in claim 1. Examiner suggested amending claim 1 to define the flag member which moves between a first position enclosed within the body to a second position upward and outward of the body to define over the flag member (6) of Burgess 3,564,750 which is not enclosed within the body (12) in the first position. Examiner stated that similar limitations should be added to claims 3, 17, and 50 in order to define over Burgess, Su, and Woodruff. Examiner stated that claim 19 would define over Burgess, Su, and Woodruff with a proposed recitation defining at least a portion of the flag member moving from a first position enclosed within the body to a second position upward and out of the body. In regard to claims 23 and 81, Examiner and applicant discussed amending the claim to more particularly define the passageway and its orientation relative to the longitudinal axis of the body and that the material is housed entirely within the body. Applicant argued that a passageway transverse to the longitudinal axis of the body which is tapered from a wide diameter end to a narrow diameter end is not shown or disclosed in the prior art of record. Examiner agreed that such a limitation if amended in claims 23 and 81 would define over the Burgess patent in view of Su 6,397,516 and Woodruff 5,901,496. Examiner stated that although Woodruff discloses a tapered passageway through the body (2, 4, 8 in Fig. 4), it would not have been obvious to a person of ordinary skill in the art to modify the bait (12) of Burgess such that it is enclosed by the tubular shaped body with a passageway through at least a portion of the body of Woodruff which is tapered from a wide diameter end to a narrow diameter end. Examiner stated that in regard to claim 30, that if amended to include an opening which extends through the outer wall of the body transverse to a longitudinal axis of the body that it would overcome the Volk et al. patent which has an opening extending within the wall of the body. Examiner also stated that a proposed recitation of the sidewall of the passage being tapered from a wide diameter end to a narrow diameter end in claim 30 would define over the Burgess, Su, and Woodruff patents. Examiner stated that in claims 38, 62, and 70, a proposed recitation of a signaling member moving from a first position enclosed within the body to a second position upward and out of the body would define over Burgess. In regard to claim 80, Examiner stated that merely amending claim 80 to include a passageway transverse to a longitudinal axis of the body would not overcome the Ballard et al. 5,927,001 patent. Examiner stated that in regard to claim 80, Ballard et al. discloses means for applying a force to the material (either of 43 located laterally of the middle 43 in Figs. 1, 2), the force being effective to cause displacement of at least a portion of the material when there is weakening of the material (when termites consume lateral ones of 43, then gravitational forces due to weight of middle 43 can cause collapse of weakened ones of lateral 43; spring not being particularly claimed); a tubular-shaped body (10) with a passageway (open space inside 10 receiving 43) disposed through at least a portion of the body from the soil toward the material (see Figs. 2, 3), the passageway transverse to a longitudinal axis of the body (open space extends between a side of triangular cross section and a vertex of the triangular cross section; see Fig. 2), the passageway enclosed by one or more sidewalls (16-18) and being tapered from a wide diameter end (end of passageway adjacent one of the sides 16 or 17) proximate the soil to a narrow diameter end proximate to the material (either vertex between 16 & 18 or 17 & 18); means for signaling the weakening of the material (18 is transparent to show the tunnels to be built into 43, also slots 51, 52 reveal or promote termite activity [see col. 3, lines 40-49]; signaling means not being particularly claimed). Examiner and applicant agreed that a proposed amendment to claim 80 further defining a signaling member or flag member moving from a first position enclosed within the body to a second position upward and out of the body would define over Burgess, Su, Woodruff, and Ballard et al. Applicant will submit a formal amendment for consideration.